



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 6823881

Date: MAR. 6, 2020

**Motion on Administrative Appeals Office Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mathematics teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions to reopen and to reconsider.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, a motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

### III. ANALYSIS

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new facts and arguments to the extent that they pertain to our summary dismissal of the Petitioner's appeal.

Although the Petitioner's brief addresses her eligibility for a national interest waiver, the Petitioner did not file a motion on the Director's initial denial decision finding her ineligible for that waiver, but rather on our summary dismissal of her appeal. Therefore, the merits of the Director's decision, and of the underlying petition, are not before us. Rather, the only issue before us is whether we properly found that the Petitioner's appeal met the applicable requirements for summary dismissal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

In relevant part, the regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an appeal shall be summarily dismissed "when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." In our decision, we noted that the Petitioner indicated that she would submit a brief and/or additional evidence within 30 calendar days of filing the appeal, and that we had not received this documentation. We further stated that the Petitioner's initial Form I-290B, Notice of Appeal or Motion, "filing did not contain a statement that specifically identifies an erroneous conclusion of law or statement of fact in the unfavorable decision being appealed."

#### A. Motion to Reopen

As we note above, a motion to reopen is based on documentary evidence of new facts. The Petitioner asserts that the attorney who filed her appeal "was not able to meet the deadline for the submission of the brief and additional evidences . . . . I supplied my lawyer with brief and additional evidences at that time but they seemed to not be submitted."<sup>1</sup>

The Petitioner presents new evidence on motion relating to her claim that she is eligible for a national interest waiver. Specifically, she submits photographs of her students, letters of thanks from her students and their parents dated June 2019, and a letter confirming her "acceptance into the 2019 [redacted] Educators' Association Union Summer Program." She also provides an April 2018 letter stating that she served as a teacher mentor for a [redacted] University student intern from Fall 2015 until Spring 2016 and her 2019-2020 membership card for the Association for Supervision and Curriculum Development.

Regarding the matter before us, the Petitioner acknowledges in her brief that her attorney did not submit a brief or additional evidence, one of the reasons we provided in our summary dismissal as a basis for that decision. She does not demonstrate how the evidence provided on motion addresses the stated grounds for summary dismissal, and this documentation is not sufficient to demonstrate that our findings were in error.<sup>2</sup> Accordingly, while the Petitioner has offered new evidence, this

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<sup>1</sup> The Petitioner filed her appeal on November 27, 2017. While she asserts that she supplied her lawyer with a brief and additional evidence at that time, she did not provide copies of that documentation to corroborate her claim.

<sup>2</sup> For example, if the Petitioner had shown that an appellate brief was submitted within thirty days after filing her appeal, and that we erred by missing or disregarding that brief, then there would be grounds to reopen the proceeding. The Petitioner, however, has not done so in this proceeding.

documentation does not demonstrate that her appeal identified its legal or factual basis, and therefore she has not overcome our prior determination.

#### B. Motion to Reconsider

The Petitioner has not met the requirements for a motion to reconsider as she has not shown that we erred in our previous decision based on the record before us on appeal. In addition, the motion to reconsider does not establish that our summary dismissal of her appeal was based on an incorrect application of law, regulation, or USCIS policy.

### III. CONCLUSION

The Petitioner has not shown that we erred as a matter of law or USCIS policy in summarily dismissing her appeal, nor has she established new facts relevant to the summary dismissal that would warrant reopening of the proceedings. Consequently, we have no basis for reopening or reconsideration of our appellate decision. The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.